

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA	)	CRIMINAL NO. 05-Cr-101
	)	
v.	)	Count 1: [Conspiracy]
	)	18 U.S.C. §371
RUBEN MORENO, JR.	)	
	)	
Defendant	)	

STATEMENT OF FACTS

If this matter were to proceed to trial, the United States would prove the following beyond a reasonable doubt.

I. INTRODUCTION

1. America Online, Inc., (hereinafter "AOL"), a wholly owned subsidiary of Time Warner, Inc., was engaged in Internet interactive services and electronic commerce. AOL was headquartered in Dulles, Virginia.

2. AutoNation, Inc., (hereinafter "AutoNation") owned and managed over 200 new and used automobile dealerships throughout the United States. AutoNation was headquartered in Fort Lauderdale, Florida.

3. In May 1999 AutoNation hired Gregory S. Horton (hereinafter "Horton") as a Director of Human Resources and later as Vice President of Human Resources, responsible for Human Resources Field Operations, Labor Relations, and Strategic Planning and Diversity. Horton served at AutoNation until approximately October 2001, at which time he joined Qwest Communications, Inc., in Denver, Colorado, as Senior Vice President of Human Resources-World Wide Operations. In November

2002, Horton left Qwest Communications and became the Executive Vice President of Human Resources at AOL in Dulles, Virginia. At AOL Horton served as the company's highest Human Resources Officer, reporting directly to AOL's Chief Operating Officer. With AutoNation and AOL, Horton either had authority to approve or the ability to influence the hiring of outside consultants to perform services in the field of human resources for each of the companies.

4. The defendant, RUBEN MORENO, JR., resided in Fort Lauderdale, Florida, and Herndon, Virginia. From May 2000 until October 2002, defendant MORENO worked for AutoNation as a Director of Human Resources for Field Operations. In February 2003, based in part upon a recommendation by Horton, AOL hired defendant MORENO as a Vice President for Human Resources, where he supervised a staff of approximately 15 at AOL's Dulles headquarters.

5. With defendant MORENO and another partner, Horton owned and controlled HRC Realty, L.L.C., which owned properties in Florida, and Advanced People Solutions, L.L.C., a staffing company located in Fort Lauderdale, Florida.

## II. THE SCHEME TO DEFRAUD AUTONATION AND AOL

6. As set forth below, beginning in approximately September 2000 and continuing until approximately August 2003 in Fort Lauderdale, Florida, and Dulles, Virginia, Horton, with the

assistance of defendant RUBEN MORENO, JR., and others, engaged in a scheme and artifice to defraud AutoNation and AOL by enriching themselves with company funds paid to outside consultants, ostensibly hired to perform human resources related services for AutoNation and AOL.

AUTONATION AND COMPANY #1

7. In approximately September 2000, Horton obtained the assistance of Company #1, a small health care consulting company in Birmingham, Alabama. Horton arranged for Company #1 to bill AutoNation for miscellaneous staffing services and exit interviewing. Horton explained to the principal of Company #1 that any such work would not be done by him (Company #1) but would be done by a company affiliated with Horton. With the assistance of defendant MORENO, Horton caused the invoices from Company #1 to be prepared, submitted, and approved by AutoNation. Defendant MORENO received an ownership interest in HRC Realty in part for agreeing to assist Horton's scheme to defraud AutoNation by providing, if necessary, any backup information and supporting work product if AutoNation officials later asked any questions about the hiring of Company #1. Beginning in October and continuing until December 2000 invoices from Company #1 in the total amount of \$366,600 were submitted to, and paid by, AutoNation.

8. With the assistance of another person, Mr. X, Horton arranged for the AutoNation checks, payable to Company #1, to be deposited into an account of the Amalgamated Bank in the Washington, D.C. metropolitan area, controlled by Mr. X. In December 2000 and January 2001, Horton directed Mr. X to write two checks to HRC Realty for a total amount of \$219,950. In January 2001, Horton also directed Mr. X to write a \$50,000 check to Advanced People Solutions.

AUTONATION AND COMPANY #2

9. In approximately August 2000 Horton arranged with a college friend, who was the principal of Company #2, to serve as an apparent general contractor on an AutoNation employee training project involving the automation of the payroll process, web design, and payroll administration. Horton told the principal of Company #2 that Company #2 did not have to perform any services on the projects other than to pay vendors. Actual work performed on the payroll training was performed in-house by defendant MORENO, with the assistance of Company #3, a recognized Human Resources consultant. Defendant MORENO agreed to assist Horton's scheme to defraud AutoNation by providing, if necessary, any backup information and supporting work product if AutoNation officials later asked any questions about the hiring of Company #2. Horton and defendant MORENO prepared Company #2's invoices and submitted them to AutoNation for payment.

10. From approximately August 2000 through June 2001, AutoNation paid \$1,169,500 to Company #2, for work performed on the payroll training projects. Based upon directions from Horton, beginning in September 2000 and continuing until September 2001, the principal of Company #2 paid HRC Realty \$598,000 and Advanced People Solutions \$239,300. Horton and defendant MORENO arranged for Company #2, rather than AutoNation, to pay Company #3 \$75,000 for its work actually performed on the payroll training project.

AUTONATION AND COMPANY #3

\_\_\_\_11. In August 2001 Horton negotiated a contract with Company #3 to implement over five quarters (16 months) 20 AutoNation payroll training programs nationwide. Horton told the principal of Company #3, in determining the price it would charge AutoNation, to set aside \$80,000 for Company #2. The principal of Company #3 agreed to do this and signed a contract with AutoNation to implement the payroll training program for \$235,000. Defendant MORENO facilitated Company #3's performance under the contract, in addition to AutoNation's payments under the contract, knowing that Company #3 would transfer a portion of the funds it received from AutoNation to a company under Horton's control. In September 2001, Horton told the principal of Company #3 to send \$60,000 to Company #2, which he did on September 4, 2001.

12. In March 2002, although he had moved on to Qwest Communications in Denver, Colorado, Horton arranged with defendant MORENO for Company #3 to receive \$60,000 for preparing an AutoNation employee survey. Defendant MORENO had remained at AutoNation and had the ability to hire or influence the hiring of outside consultants for AutoNation. Defendant MORENO agreed with Horton to have Company #3 send AutoNation an additional \$40,000 invoice for work ostensibly done on the employee survey. Defendant MORENO caused AutoNation to pay the \$40,000, knowing that Company #3 would in turn transfer the \$40,000 to a company under Horton's control. After Company #3 received the \$40,000 from AutoNation, the principal of Company #3, at Horton's direction, sent the \$40,000 to HRC Realty on April 18, 2002.

AOL AND COMPANIES #3 AND #4

13. In January 2003, employed as AOL's Executive Vice President for Human Resources, Horton caused AOL to hire Company #3 as a consultant on specific Human Resources initiatives. As part of the scheme to defraud AOL in March and April 2003, Horton arranged for Company #3 to bill AOL \$100,000 for work ostensibly performed by Company #3, referred to under the contract as "Statement of Work #5," when in fact no work was done nor was it ever intended to be done. Statement of Work #5 purported to be a detailed review of a survey of AOL's call center employees--a survey that had already been prepared and reviewed in-house.

After Company #3 received the funds, Horton directed the principal of Company #3 to send the \$100,000 to Company #4, a company controlled by Horton. Shortly thereafter, Horton directed the principal of Company #4 to pay \$85,000 to HRC Realty.

14. In late May 2003, officials at AOL became suspicious about AOL's \$100,000 payment to Company #3. AOL officials questioned Horton and the principal of Company #3 about the \$100,000 payment and about other work performed by Company #3 on behalf of AOL, for which Company #3 had been compensated.

15. In order to conceal from AOL his own financial interest in HRC Realty, defendant MORENO, acting under Horton's direction, attempted to conceal the scheme from AOL officials as follows:

(i) defendant MORENO passed on to the principal of Company #3 the fact that Horton no longer trusted his AOL secretary and that Horton could not safely discuss strategy with the principal of Company #3 in phone conversations at his AOL office. To facilitate contact, defendant MORENO then provided a cell phone number, on a phone previously used by Horton's wife, through which Horton and the principal of Company #3 could safely communicate; and

(ii) defendant MORENO urged the principal of Company #3 to attempt to justify the \$100,000 payment to AOL officials by itemizing for AOL officials other work Company #3 had

arguably performed for AOL for which Company #3 had not been compensated.

16. In August 2003, when asked by AOL officials if he shared any financial interests with Horton, defendant MORENO denied that he had any such interests. In fact, not only did he share a financial interest in HRC Realty, but from January 2001 through January 2003, defendant MORENO had received approximately \$79,317 of HRC Realty funds for his personal use. In addition, during the same time period, HRC Realty transferred approximately \$353,000 to Advanced People Solutions, a company in which defendant MORENO held an interest of approximately 25 per cent. Defendant MORENO, however, never received any funds from Advanced Peoples Solutions.

17. In August 2003 Horton resigned from AOL.

18. AOL terminated defendant MORENO in October 2003, after discovering his financial interest in HRC Realty,

THE USE OF AN INTERSTATE WIRE COMMUNICATION

19. On or about April 10, 2003, Horton caused an AOL employee, in Dulles, Virginia, to send via email to the principal of Company #3, located outside of the Commonwealth of Virginia, a draft of the contract listed as "Statement of Work #5" with instructions to print, sign, and forward the original contract to an AOL official.



Respectfully submitted,

Paul J. McNulty  
United States Attorney

By: \_\_\_\_\_  
Stephen P. Learned  
Assistant United States Attorney

Seen and Agreed:

\_\_\_\_\_  
Ruben Moreno, Jr.

\_\_\_\_\_  
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